

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

FELIX CALVIN CUNNINGHAM, # 93791

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:12cv615-DPJ-FKB

**JACKSON POLICE DEPARTMENT,
OFFICER G. JIMERSON, OFFICER A.
NICHOLS, ROBERT S. SMITH,
SHUNDRAL HOBSON, DETECTIVE W.
WADE, MICHELE PURVIS HARRIS, and
KATIE BRADSHAW**

DEFENDANTS

ORDER

This *pro se* matter is before the Court for *sua sponte* consideration of the merits of certain claims. Plaintiff Felix Calvin Cunningham is a pretrial detainee at the Hinds County Detention Center. In this action, Cunningham challenges his arrest and detention, naming the Jackson Police Department and others as defendants. The Court has considered and liberally construed the pleadings.

Mississippi law determines the Jackson Police Department's capacity to be sued. Fed. R. Civ. P. 17(b)(3). And in Mississippi, a police department is an extension of the city, not a separate legal entity that may be sued. Miss. Code Ann. § 21-17-1(1) (municipalities are distinct legal entities); Miss. Code Ann. § 21-21-1 *et seq.* (municipalities may create and fund police departments); *see also Brown v. Thompson*, 927 So. 2d 733, 737 (Miss. 2006) (en banc) (holding that sheriff's department was not a proper party). Therefore, the Jackson Police Department is dismissed.

Though the Jackson Police Department is dismissed, the Court previously entered an

order asking Cunningham whether he intended to sue the City of Jackson, Mississippi, and if so, on what basis. Order [13] at 2. Cunningham responded [14] indicating a desire to sue the city under 42 U.S.C. § 1983 and state law. The City of Jackson is therefore substituted for the Jackson Police Department. The Court expresses no opinion on the merits of Cunningham's claims against the city.

IT IS THEREFORE ORDERED AND ADJUDGED that, for the reasons stated above, Defendant Jackson Police Department should be and is hereby **DISMISSED WITHOUT PREJUDICE**. The Clerk of Court shall add the City of Jackson as a Defendant herein.

SO ORDERED AND ADJUDGED this the 20th day of September, 2012.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE